

that a firm will not be deemed not independent in regard to a particular plan if a former officer or employee of such plan or plan sponsor is employed by the firm and such individual has completely disassociated himself from the plan or plan sponsor and does not participate in auditing financial statements of the plan covering any period of his or her employment by the plan or plan sponsor. For the purpose of this bulletin the term "member" means all partners or shareholder employees in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit;

(3) An accountant or a member of an accounting firm maintains financial records for the employee benefit plan.

However, an independent, qualified public accountant may permissably engage in or have members of his or her firm engage in certain activities which will not have the effect of removing recognition of his or her independence. For example, (1) an accountant will not fail to be recognized as independent if at or during the period of his or her professional engagement with the employee benefit plan the accountant or his or her firm is retained or engaged on a professional basis by the plan sponsor, as that term is defined in section 3(16)(B) of the Act. However, to retain recognition of independence under such circumstances the accountant must not violate the prohibitions against recognition of independence established under paragraphs (1), (2) or (3) of this interpretive bulletin; (2) the rendering of services by an actuary associated with an accountant or accounting firm shall not impair the accountant's or accounting firm's independence. However, it should be noted that the rendering of services to a plan by an actuary and accountant employed by the same firm may constitute a prohibited transaction under section 406(a)(1)(C) of the Act. The rendering of such multiple services to a plan by a firm will be the subject of a later interpretive bulletin that will be issued by the Department of Labor.

In determining whether an accountant or accounting firm is not, in fact, independent with respect to a particular plan, the Department of Labor will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant or accounting firm and that of the plan sponsor or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of annual reports with the Department of Labor.

Further interpretive bulletins may be issued by the Department of Labor concerning the question of independence of an

accountant retained by an employee benefit plan.

[40 FR 53998, Nov. 20, 1975, as amended at 40 FR 59728, Dec. 30, 1975. Redesignated at 41 FR 1906, Jan. 13, 1976]

§ 2509.75-10 Interpretive bulletin relating to the ERISA Guidelines and the Special Reliance Procedure.

On November 5, 1975, the Department of Labor (the "Department") and the Internal Revenue Service (the "Service") announced the publication of a compendium of authoritative rules (hereinafter referred to as the "ERISA Guidelines") relating to ERISA requirements. See T.I.R. No. 1415 (November 5, 1975) issued by the Service. These rules were published in recognition of the need to provide an immediate and complete set of interim guidelines to facilitate (1) adoption of new employee pension benefit plans (hereinafter referred to as "plans"), and (2) prompt amendment of existing plans, in conformance with the applicable requirements of the Employee Retirement Income Security Act of 1974 ("ERISA") pending the issuance of final regulations or other rules. These rules govern the application of (1) the qualification requirements of the Internal Revenue Code of 1954 (the "Code") added or amended by ERISA, and (2) the requirements of the provisions of parts 2 and 3 of title I of ERISA paralleling such qualification requirements (both such sets of requirements hereinafter referred to collectively as the "new qualification requirements").

The ERISA Guidelines incorporate by reference the documents relating to the new qualification requirements heretofore published by the Department and by the Service as temporary or proposed regulations, revenue rulings, revenue procedures, questions and answers, technical information releases, and other issuances. The ERISA Guidelines also incorporate additional documents published on November 5, 1975, or to be published forthwith, which are necessary to complete the interim guidelines relating to the new qualification requirements. See the schedule set forth below for a complete list and brief description of the documents comprising the ERISA Guidelines.

The Department and the Service emphasized that the ERISA Guidelines constitute the entire set of interim rules of the Department and the Service for satisfying the new qualification requirements, and thus provide authoritative guidance in respect of the new statutory requirements bearing on qualification. These rules are applicable to individually designed plans and to multiemployer (or other multiple employer) plans, and may be relied upon until amended or supplemented by final regulations or other rules. Moreover, the Department and the Service

announced that any provisions of final regulations or other rules which amend or supplement the rules contained in the ERISA Guidelines will generally be prospective only, from the date of publication. Further, in the case of employee plan provisions adopted or amended before the date of such publication which satisfy the ERISA Guidelines, such final regulations or other rules will generally be made effective for plan years commencing after such date, except in unusual circumstances.

The Service further announced that the ERISA Guidelines incorporate the procedures that will enable employers to obtain determination letters as to the qualification of pension, annuity, profit sharing, stock bonus and bond purchase plans which satisfy the requirements of sections 401(a), 403(a) and 405(a) of the Code, as amended by ERISA. The Service also pointed out that the ERISA Guidelines will enable sponsors of master and prototype plans (whether newly established or amended) to obtain opinion letters as to the acceptability of the form of such plans, and further, that employers who establish plans designed to meet the requirements of section 301(d) of the Tax Reduction Act of 1975 (relating to employee stock ownership plans) will be able to obtain determination letters as to the acceptability of such plans (whether or not such plans are intended to be qualified).

To facilitate further the adoption of new plans and the prompt amendment of existing plans in conformance with the new qualification requirements, the Service announced on November 5, 1975, the adoption of a special procedure (hereinafter referred to as the "Special Reliance Procedure") pursuant to which the adoption, on or before May 30, 1976, of new plans and amendments of existing plans may be effectuated with full reliance upon the rules which comprise the ERISA Guidelines and without regard to any amendment or supplementation of such rules before such date. Therefore, except in unusual circumstances (described in Technical Information Release No. 1416 (November 5, 1975)), plans which comply with the Special Reliance Procedure shall generally be considered by the Service as satisfying the qual-

ification requirements of the Code added or amended by ERISA for plan years commencing on or before December 31, 1976, to which such requirements are applicable, notwithstanding the date when final regulations or other rules hereafter published which amend or supplement the rules comprising the ERISA Guidelines may otherwise be made effective. Reference is hereby made to Technical Information Release No. 1416 (November 5, 1975) for a description of the Special Reliance Procedure.

The Department announced that plans which comply with the Special Reliance Procedure will be considered by the Department as satisfying the requirements of the provisions of parts 2 and 3 of title I of ERISA which parallel the qualification requirements of the Code added or amended by ERISA to the same extent as such plans are considered by the Service as satisfying, in accordance with the terms of the Special Reliance Procedure, such qualification requirements.

The availability of the Special Reliance Procedure will substantially diminish the occasions for plans to avail themselves of the right to satisfy, for tax purposes, the qualification requirements of the Code (added or amended by ERISA) by retroactive amendments adopted during or after the close of a plan year, in accordance with section 401(b) of the Code and the temporary regulations thereunder. The Department pointed out that no explicit parallel provision to section 401(b) of the Code is contained in title I of ERISA. Nevertheless, to the extent retroactive amendments to a plan are made to satisfy the requirements of parts 2 and 3 of title I of ERISA which parallel the qualification requirements of the Code added or amended by ERISA, the Department noted that such plan will be in compliance with such requirements if such an amendment designed to satisfy such requirements (1) is adopted by the end of the plan year to which such requirements are applicable, and (2) is made effective for all purposes for such entire plan year.

The schedule of documents comprising the ERISA Guidelines follows.

ERISA GUIDELINES—SCHEDULE OF DOCUMENTS

Publication date 1975	Document	Subject	Code and ERISA sections
Jan. 8	TIR 1334	Questions and answers relating to defined contribution plans subject to ERISA.	410, 411, et al.
Apr. 21	40 FR 17576	Notice of proposed rulemaking: Qualification (and other aspects) of HR-10 plans.	401(c), 401(d), 401(e), 46, 50A, 72, 404(e), 901, and 1379.
June 4	T.D. 7358	Temporary regulations: Notification of interested parties.	7476.
July 14	T.D. 7367	Temporary regulations: Notice of determination of qualification.	7476.

ERISA GUIDELINES—SCHEDULE OF DOCUMENTS—Continued

Publication date 1975	Document	Subject	Code and ERISA sections
Sept. 8	40 FR 41654	Department of Labor—Minimum standards for hours of service, years of service, and breaks in service relating to participation, vesting, and accrual of benefits.	401(a)(3)(B), 411(a)(5)(C), and ERISA secs. 202, 203, and 204.
Sept. 17	TIR 1403	Questions and answers relating mainly to defined benefit plans subject to ERISA (addition to TIR 1334).	410, 411, et al.
Sept. 18	40 FR 43034	Notice of proposed rulemaking: Definitions of multi-employer plan and plan administrator.	414(f) and (g).
Sept. 29	T.D. 7377	Temporary regulations: Certain retroactive amendments of employee plans.	401(b).
Oct. 3	T.D. 7379	Temporary regulations: Qualified joint and survivor annuities.	401(a)(11).
	T.D. 7380	Temporary regulations: Minimum participation standards.	410.
Oct. 8	T.D. 7381	Temporary regulations: Commencement of benefits.	401(a)(14).
Oct. 15	T.D. 7382	Temporary regulations: Requirement that benefits under a qualified plan are not decreased on account of certain social security increases.	401(a)(15).
Oct. 16	T.D. 7383	Temporary regulations: Nonbank trustees of pension and profit sharing trusts benefiting owner-employees.	401(d)(1).
	40 FR 48517	Notice of proposed rulemaking: Certain custodial accounts.	401(f).
Oct. 30	TIR 1408	Questions and answers relating to mergers, consolidations, etc.	401(a)(12) and 414(1).
Nov. 3	Rev. Rul. 75-480, 1975-44 IRB.	Updating of Rev. Rul. 71-446 to reflect changes mandated by ERISA.	401(a)(5).
	Rev. Rul. 75-481, 1975-44 IRB.	Guidelines for determining whether contributions or benefits under plan satisfy the limitations of sec. 415 of the code.	401(a)(16) and 415.
	TIR 1411, Rev. Proc. 75-49, 1975-48 IRB.	Vesting and discrimination	401(a)(4) and 411(d)(1).
Nov. 4	TIR 1413	Questions and answers relating to employee stock ownership plans.	401, 4975, and sec. 301(d) of the Tax Reduction Act of 1975.
Nov. 5	T.D. 7387	Temporary regulations on minimum vesting standards.	411.
	T.D. 7388	Controlled groups, businesses under common control, etc.	414(b) and (c).
(¹)	TIR	Nonforfeiture of employee derived accrued benefit upon death.	411(a)(1).
(¹)	Department of Labor—Interpretive bulletin: Definition of seasonal industries.	410(a)(3)(B), 411(a)(5)(C), and ERISA secs. 202(a)(3)(C), 203(b)(2)(C).
Nov. 7	40 FR 52008	Department of Labor—additional requirements applicable to definition of multiemployer plan.	414(f) and ERISA sec. 3(37).
(¹)	Department of Labor—suspension of benefits upon reemployment of retiree.	411(a)(3)(B) and ERISA sec. 203(a)(3)(A).
Dec. 3	TIR 1422	Assignment or alienation of plan benefits	401(a)(13).
Dec. 9	TIR 1424, Rev. Proc. 76-1, 1976-1 IRB.	Vesting and discrimination	401(a)(4) and 411(d)(1).
(¹)	TIR, Rev. Rul	Appropriate conversion factor	411(c)(2)(B)(ii).

¹ To be published forthwith.

[41 FR 3289, Jan. 22, 1976]

§ 2509.78-1 Interpretive bulletin relating to payments by certain employee welfare benefit plans.

The Department of Labor today announced its interpretation of certain provisions of part 4 of title I of the Employee Retirement

Income Security Act of 1974 (ERISA), as those sections apply to a payment by multiple employer vacation plans of a sum of money to which a participant or beneficiary